

to rule that way in order to remain consistent with their view of the first amendment.

There have been a couple of things in which her personal view clearly affected her judgment as, in this case, the dean of the Harvard Law School. The one case everybody is familiar with is she disagreed with the congressional policy on don't ask, don't tell. But instead of having a policy that said President Clinton, who signed the bill, was unwelcome on the Harvard campus or the Senators and Representatives who had passed the bill—by the way, it was a Democratic House and Senate—that they were not welcome on the campus, she wrote at the time extensively that this was a discriminatory policy of the military and that, therefore, the military would not be allowed on campus to recruit, as were all other businesses.

Eventually, she had to change her position because the Solomon amendment said the university would not get any Federal funding, and they got about 15 percent of their funding from the Federal Government. They finally, after about a year, went back to the policy of allowing military recruiters on campus.

In my view, she not only mischaracterized the situation by calling it the military's discriminatory policy, when the military is obviously simply following the orders of their Commander in Chief, President Clinton, and the law passed by the Congress, but also she discriminated by not criticizing or denying entry onto the campus the people who had passed and signed the law into effect but instead discriminated against the military who at the time was fighting a war. That represents a misjudgment on her part based on, obviously, her personal convictions. It interfered with the job she was supposed to be doing at the time.

Would she apply that same kind of rationale when she sits on the U.S. Supreme Court? She obviously has strong personal views about this issue. How will she apply those personal views in cases of, let's say, "the don't ask, don't tell policy that may come before her or some other policy that she believed discriminated against gays or homosexuals. She will have to somehow find a way to demonstrate to us that she will not allow those personal convictions to color her judgment on the Court. It might be kind of hard, given it did color her judgment in this previous situation.

More recently, she wrote to Members of the Senate deeply critical of a bill Senator LINDSEY GRAHAM and I had introduced and was eventually passed by the Senate and signed into law that provided a mechanism for dealing with the terrorists at Guantanamo Bay. We defined "military combatants" in this legislation. We provided for a determination of their status, for a review of that determination of status, by a direct appeal to the District of Columbia Circuit Court of Appeals.

Nothing like that had ever been done, where after determination of status as an enemy combatant, those people would be able to go directly to a Federal court—and not just any Federal court, the DC Circuit Court of Appeals, which is one step below the Supreme Court—to have that determination reviewed. That was not sufficient for her. She said: No, this was discriminatory; that they had to have a right to appeal to other Federal courts any sentencing or determination of guilt, if they stood trial in military commissions. That has never been the law. The Supreme Court has never said that is the law. Yet she compared what we did in that bill to the discriminatory and unlawful actions of a dictator.

I do not like to be called or compared to a dictator, and I can assure my colleagues LINDSEY GRAHAM, my colleague who was primarily responsible for drafting that legislation, very much had in mind the best way to deal with this situation from a legal standpoint, as well as to protect American citizens. He was not trying to enact policies similar to dictators'.

In addition to the language being quite injudicious, it seems to me it raises questions about whether if these kinds of questions were posed to her in the future she could lay aside what are obviously her strong personal convictions about this issue.

There are bound to be cases involving enemy combatants and others in this war on terror that will continue to come to the U.S. Supreme Court. Will she recuse herself from these cases because she has expressed strong personal views? That would seem to me to be appropriate, unless she could somehow demonstrate she can put all that behind her and decide these cases strictly on the law, irrespective of her personal prejudices.

I hope I am not perceived by these comments to have made a judgment about Elena Kagan. When I voted for her confirmation as Solicitor General, I said I thought she was well educated, very intelligent, very personable, and I wanted her to have a chance to do the job as Solicitor General. I had hoped she would remain in the position for a little bit longer than a year before being nominated for a position as prestigious as the U.S. Supreme Court. Nonetheless, I am firmly committed to examining her record as thoroughly as possible and then making a judgment based on that entire record.

Despite the fact I have raised two questions, I do not want that to be suggestive of any conclusion I have reached because I have not reached a conclusion. In fact, I am a little bit critical of my colleagues who have immediately reached a conclusion without even examining the record. There is something like 160,000 pages of documents in the Clinton Library relative to her record as a policy adviser in the Clinton White House. Obviously, some of her views will be reflected in those documents and I think it is important to see what they say.

It may well be that she represents a very tempered thought that is pragmatic and not overly ideological and which appears to suggest that in the position she held, she could lay aside her personal views and give good advice. It is quite possible that is what those records will reflect. It may also reflect something different.

Until I have the benefit of reviewing those documents and then talking with her personally and hearing her testify, it seems to me a bit premature to be making a judgment about whether she should be confirmed.

Again, I wanted the opportunity to reassure all of my colleagues that Sandra Day O'Connor, the first woman appointed to the Supreme Court, did, indeed, have a good judicial experience on the bench prior to her nomination. That is not an absolute requirement, in my view, because her colleague from Arizona on the Court for a while, Chief Justice Rehnquist, had not had judicial experience. Every other nominee in the last 40 years has. He had not. Nonetheless, he had extensive experience of over 20 years in law practice, both in the private law practice as well as the Department of Justice. So he, too, had a very long record from which one could judge whether his personal views could be set aside in judging cases.

That, at the end of the day, is the test that should apply to all nominees, should apply to Elena Kagan. I am sure my colleagues and I will have ample time to review the report, reflect on it, discuss it with her, and then come to our judgments as to whether she satisfies that judgment.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

GLOBAL WARMING

Mr. INHOFE. Mr. President, I ask unanimous consent to speak in morning business for such time as I may consume.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. INHOFE. Mr. President, if you have been watching the global warming debate lately, you will notice the supporters of cap and trade are getting kind of nervous. They realize the political environment for cap and trade couldn't be more favorable—they have a majority of liberals in the Senate, a majority of liberals in the House, and liberals in the White House. But they also realize time is running out. The November elections are looming, and there are a lot of people coming up for reelection who don't want to go back to the electorate and say: Look at me;

aren't you proud; I voted for the largest tax increase in American history.

As Senator KERRY put it, this is the last call to pass the bill, and that is exactly what Senator KERRY is trying to do. But he will not get 60 votes. He will not get the support of the Democrats in the heartland, and he will not convince the American public they need this tax increase. I say this with confidence because the bill Senator KERRY introduced last week with Senator LIEBERMAN is the same old cap-and-trade scheme the Senate rejected in the McCain-Lieberman bill in 2003, the McCain-Lieberman bill in 2005, the Warner-Lieberman bill in 2008, and the Waxman-Markey bill in 2009. Let us keep in mind that cap and trade is cap and trade, and that is a very large tax increase.

Don't forget that the Senate support for cap and trade over that time has actually dropped. If you take it from 2003 to the present time, in 2003, they got 43 votes; in 2005, they got 38 votes; and in 2008, they got 48 votes. But you have to keep in mind that 10 of those were for a procedural vote and they said they wouldn't vote for it, so it went down to 38 votes at that time. So that is a far cry from the 60 that will be necessary.

The Kerry-Lieberman bill is not going to pass. However, those who still believe in the anthropogenic catastrophic warming—which I don't, but even if you did believe it—should keep in mind that this wouldn't solve the problem. What I am saying is this: There are a lot of people around—not nearly as many as 5 or 10 years ago—who believe that anthropogenic gases—CO₂, methane, carbon dioxide—are causing catastrophic global warming.

They are still here. They still believe that. But even if you believed it, passing this bill would not help the situation because in this bill, all it applies to is the United States of America. We could go ahead and restrict all the CO₂ we want to in the United States, it is not going to lower it at all.

I have a lot of respect for the new—not too new, now she has been here for a while—EPA Administrator, Lisa Jackson. I appreciate her honesty. I asked her the question back when we had the Waxman-Markey bill before the U.S. Senate Committee on Environment and Public Works, I said to the Administrator: In the event we were to pass any of these cap-and-trade bills in the United States, would it have the effect of lowering the CO₂ worldwide?

She said no, it wouldn't. In fact—she showed a chart. I should have it with me down here right now. She said it would not because this only applies to the United States.

I contend it would actually increase world emissions. The reason I say that is if we were to unilaterally do this, restrict our ability to build power in America, then our jobs would have to go to countries where the power is. Consequently, they would go to coun-

tries such as Mexico, China, and India, places where they do not have any meaningful restrictions on CO₂. That would have the effect of increasing it, not decreasing it.

I have a lot of respect for Lisa Jackson. I kind of abused her time during this oilspill. I called her many times. I know she is right on top of things and is doing a very good job.

Here we go again. Look closely at the Kerry-Lieberman bill. I am sure you have seen it before. It is the Waxman-Markey bill. You remember that. It passed in the middle of the night in the House of Representatives. We all remember that, passing by 219 to 212. Every kind of deal in the world was made and nobody knew it except the vote finally took place and they eked it out. Democrats, 44 of them, voted no because they knew the cost of the bill. The Waxman-Markey bill, according to the National Black Chamber of Commerce, would lead to a net reduction of 3.6 million jobs, raise electricity rates by 48 percent, and disproportionately affect the West, Midwest, South, and Great Plains, which rely heavily on fossil fuels.

The word about Waxman-Markey spread across the country and the American people were listening. Citizens at townhall meetings expressed their outrage. They said no to a bill that would give big government control over how we use electricity and how we live every day of our lives. That is what the public would get with Kerry-Lieberman.

They also get a gas tax or linked fee. This is Washington jargon for a thing like gas tax: they don't call it a gas tax, they call it a linked fee for transportation fuels. From what I understand, this linked fee is being pushed by a select group of big oil companies. That is right, oil companies. I said some time ago the only way they can somehow pass any kind of cap and trade is to somehow divide and conquer. In other words, go to some of the oil companies, gas companies, coal companies, nuclear companies, and tell them we are going to pick winners and losers, but guess what. You are a winner. We will pick you and everything is going to be wonderful. The public needs to know a lot of big oil companies are involved. They are pushing a tax they know will be paid for by consumers, the same consumers suffering from an economy with 10 percent unemployment. I will make myself clear: I stand with the consumers, and by that I mean farmers, families, truckers, businesses large and small in rural Oklahoma, who drive long distances. They don't need this tax increase now or ever.

It is a sad thing that we have to use those tactics. Then it is even not all that smart, when you stop and think that has not worked before. They tried the same thing, to divide and conquer, before. In this case they brought in some of the refiners and said if you will join with us, this will be fine with you.

You have to raise your rates, but then you can pass that on to the consumers. Then we pass a gas tax increase and those consumers will be hit twice, but you will be all right.

That is not the way it works. The other provision is crafted and select business groups. Do they think a bill on cap and trade is good for the economy, good for your members? I don't think so.

Don't forget what happened with Waxman-Markey; some utilities thought they had a deal. When the language was actually drafted, the deal made WAXMAN and MARKEY happy but not the utilities.

This is interesting, because they had the great unveiling that took place last week but didn't have the bill language. It had an outline of some things but not the exact bill language. That is exactly what they tried to do with Waxman-Markey. This time we will insist on seeing the actual language.

I remind my colleagues of a pattern here. We had the Waxman-Markey vote under the cover of night. We had the "Cornhusker" kickback, with the Senate health care bill. Now we have secret meetings with stakeholders and CEOs. There is a sense that what they are doing has little support with the American people. They are hiding and obscuring and evading.

I suppose I can't blame them. Remember the August recess of last year? That was the beginning of what we call the tea party movement. This was interesting because this all happened during the August recess when those of us in the House and Senate were back in our States. The people of the tea party movement were objecting to four things. There are four things they are complaining about.

No. 1 was the runaway cost of government, the increased deficits. Let's stop and think about it. In the first year of the Obama administration the deficits increased by \$1.4 trillion. That is what happened the first year. That was after the tea parties, the August recess of 2009.

The second issue then was not to have a government-run health care system. We temporarily lost that. There will be some changes in the Senate and House after the November elections. A lot of that can be corrected. Nonetheless, those are the first two issues of the tea partiers who are out there today. These are people who have not identified with any party but they want to save America from this socialist trend we have right now.

The third issue was complaining about the closing of Guantanamo Bay or Gitmo. I look at this and I wonder, we have a President with an obsession to close Gitmo, a place where we have been able to put people who do not fit into a prison system since 1903. It is one of the best deals the government has. I think we only pay a lease of \$4,000 a year. It is just like it was in 1903. Here is a place where you can put terrorists, the terrorists who are the

detainees. These people are not criminals in the sense of our criminal code. These are terrorists. They don't fit in our court system. There is not an American out there who has not heard about what they are doing with the constitutional rights and Miranda rights and all that. That does not apply in these cases. It should not apply in these cases. But this President has wanted to bring these terrorists—close GITMO, with no place else to put them—bring them back to the United States for either trial or incarceration.

At the beginning the President had identified some 17 institutions in America where you could put these terrorists. One happened to be in my State of Oklahoma. It was Fort Sill. Fort Sill has a great artillery installation there and they do have a small prison. I went down after he had made these suggestions of putting terrorists throughout the United States and I talked to—there is a Sergeant Major Carter down there in charge of that prison. She said go back and tell those people in Washington keep GITMO open. She happened to have had two tours of duty in Gitmo. She said that is state of the art. People are treated well; they don't torture anyone; it is the only safe place to keep terrorists; they have a courthouse they can use for tribunals that cannot be found anywhere else in the United States.

The third issue of these tea parties was to reject the idea that we should close Gitmo and bring these terrorists to the United States.

That comes to the fourth one, the one of our discussion today, and that is the fact that they were protesting cap and trade. Cap and trade is a tax increase. A lot of people say if you want to reduce CO₂ emissions, why don't you put a tax on CO₂ emissions? Some of the strongest supporters of the global warming concept are the ones who say let's have a tax on CO₂. Do you know why they don't? They don't have it because that way, people know what it costs, and they will reject it.

If you have cap and trade, that is a way you can pick winners and losers and convince everyone he or she is going to be a winner. So one of the things they were protesting during the August recess of 2009 was this thing that would result in being the largest tax increase in the history of the country.

I have often said the most egregious vote in this Senate's history, up to that time, up to October 1, 2008, was the \$700 billion bailout. That led to the AIG bailout and the Chrysler bailout and the General Motors bailout. All of that took place and that was on October 1, 2008; \$700 billion to have an unelected bureaucrat to do whatever he wanted without any constraints. As bad as that is, a cap-and-trade bill would end up—at least \$700 billion, that is a one-shot deal. With the cap and trade it is every year.

I know it is difficult for people in America when you start talking about

billions and trillions of dollars, so I always do my math in relation to the State of Oklahoma. In Oklahoma, I take the number of families who file a tax return and do the math. For example, the \$700 billion came out that would cost each taxpaying family in Oklahoma about \$5,000 for that. A cap-and-trade tax—they have actually done some calculations, the Wharton School of Economics, MIT, CRA, and other groups. The range is always between \$300 and \$400 billion, but that is every year. That would cost my people in Oklahoma, according to the calculations of CRA, a little bit over \$3,100 a year and you don't get anything for it.

The opposition has only grown stronger and more intense. Thus, the back-room dealing and secret deals to get 60 votes are not going to work.

I should note, if Kerry-Lieberman were successful in passing, which it will not be, but if it were, it would go to conference—that is the way things are worked here—with the Waxman-Markey bill. If this bill passed the House, that would go to conference, and if this goes to conference that means that Waxman-Markey lives.

We all remember what it did, the Waxman-Markey bill. The authors of that bill, as well as Senators KERRY and LIEBERMAN, have argued that we need one standard, one framework to regulate greenhouse gases. However, the problem is in addition to imposing what would be the largest tax increase in history, these bills do not preempt other laws now being used to regulate greenhouse gases and drive up costs for industries. This would mean there would be multiple standards, multiple regulations, creating more confusion, more bureaucracy and, of course, more taxes.

But we still have a liberal press that is in denial, the same as some of the Senators who are promoting this. I picked up USA Today last Friday on my way back to Oklahoma and I think on page 3 at the top was this article talking about how the lizards are going to become extinct as a result of global warming. They don't say "alleged global warming," they just say it is global warming. So a lot of people, even though they realize the truth of this, because the truth has come out with climate change and all that stuff, they keep reading this over and over so they assume it is true.

Today I should have been speaking in Chicago, at the Heartland Institute's climate conference, but because we had votes this afternoon I was not able to do it. I didn't want to miss these votes. I thank my former staffer Marc Morano, who will be speaking at the event, for his efforts at exposing global warming alarmism. At the Heartland Institute, it is my understanding, is the Fourth International Conference on Climate Change. It will be held in Chicago today, held as we speak. The theme of the ICC-4 will be "Reconsidering the Science and Economics."

New scientific discoveries are casting doubt on how much of the warming of the

twentieth century was natural and how much was manmade, and governments around the world are beginning to confront the astronomical cost of reducing emissions. Economists, meanwhile—

I am reading now from their statement—

are calculating that the cost of slowing or stopping global warming exceeds the social benefits.

The purpose of the ICC-4 is the same as it was for the first three events, to build momentum and public awareness of the global warming "realism" movement, a network of scientists, economists, policymakers and concerned citizens who believe sound science and economics, rather than exaggeration and hype, ought to determine what actions, if any, are taken to address the problem of climate change.

They do not all agree on the causes and the extent, but it is kind of interesting because one of the attendees there came out—I just read this. I have it in front of me now. It is a geologist who is a very prominent U.S. geologist—urging the world to forget about global warming because global cooling has already begun.

Dr. Don Easterbrook's warning came in the form of a new scientific paper he presented to the fourth International Conference on Climate Change in Chicago . . .

That is today. Dr. Easterbrook is an emeritus professor at Western Washington University, who has authored 8 books and 150 journal publications. His full resume is here.

So today the event is taking place. On his Web site, climatedepot.com, we highlight some of the details.

Over the next several weeks, I will be speaking on the EPA's so-called tailoring rule because this all goes back to the Clean Air Act and the Clear Air Amendments. What it says is, they are going to change that, since that belongs to—that would cover almost every church, every small business, everything in America, to only cover the great big giants.

It is not going to work. Everyone is going to be in on this deal. That would not be constitutional. I think everyone knows it. Along with the tailoring rule, I will continue to point out that the endangerment finding is based on IPCC's flawed science.

By the way, the IPCC is the Intergovernmental Panel on Climate Change. It is a part of the United Nations. They are the ones that started this whole thing back in 1988. The problem we have with that is they had an agenda when they started. I can recall, over the years, scientists coming to me and I would stand at this podium and I would make truthful statements about how the science is being fixed.

I have one, if anyone doubts my sincerity when I say this, it is on my Web site. You can look it up. Five years ago, I talked about how the top scientists in America were coming to me and saying: Look, they will not allow people who disagree with their hypothesis, who disagree with their opinions, to even be part of the IPCC.

Well, I was vindicated last December when the Climategate thing came out,

and all these people who had been sending stuff in, they uncovered some memos going back and forth on how they were going to try and make people believe that actually anthropogenic gases cause global warming. Anyway, that came at a very appropriate time. I think the people are aware of what is happening.

Let me make one last comment about this endangerment finding. We have tried—not “we” but those who are promoting the idea of the anthropogenic gases cause global warming, they have been trying to introduce the bills to have a cap-and-trade system for the United States. They have been doing this now about for about 9 years. It has not worked.

So President Obama has stated: All right, if the House and the Senate are not going to vote to do this, we will do it administratively. All we have to do is have an endangerment finding, which we could influence, and once the endangerment finding is there, then that would include, with the real pollutants, SO_x, NO_x, and mercury, CO₂. If they do that, then they can start regulating CO₂.

Well, it is not quite that easy. Lisa Jackson, I have already said some nice things about her, and I appreciated her honesty in response to this question. Right before Copenhagen, I suspected that the Obama administration was going to have an endangerment finding. When they did, I knew it had to be based on science, so I asked her: What science would this, by and large, be based on, if you have the endangerment finding.

She said the IPCC. Well, wait a minute. That is the same science that, through Climategate, has been totally rebuffed and no longer is legitimate, either in reality or in the eyes of the American people and people around the world.

So while I am concerned obviously that we should try to do something such as this through an endangerment finding, do administratively what he is unable to do through the House and Senate, that is not going to work. So I would only say, I know all the Tea Party people are still out there. Keep in mind, you lost your fight with the government-run health care, you lost your fight with the huge deficit, and so far we have not lost on the closing of Gitmo. I think we will be able to keep it open. But the one issue that is up for grabs right now is this endangerment finding.

Let's keep reminding all the people whom you meet with prior to the elections of November, and particularly during the upcoming August recess, that a cap-and-trade system would end up being the largest tax increase in the history of America and it would happen every year and it would not accomplish anything.

I yield the floor and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENZI. I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ENZI. Mr. President, I ask unanimous consent to be able to speak as in morning business but on an amendment that I will bring up later on the bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FINANCIAL REGULATORY REFORM

Mr. ENZI. Mr. President, I have had some concerns over the consumer protection part of the financial reform bill, mostly because I do not think there are very many limitations on it. Particularly in the area of personal privacy, I have some major concerns. So I have developed an amendment that I think will solve that. It is the kind of amendment I have often seen brought up by both sides of the aisle to make sure no agency is going through your personal finances without your permission or any other thing that is personal.

So if you think full-body scans at the airport security is bad, they do pale in comparison to the consumer protection provisions in the financial regulatory bill we are debating. Even if you are okay with the heightened airport security measures, will you be OK with a full scan of your financial records?

If left alone, this bill will set up a Federal bureaucracy that will be able to comb through the personal financial records of millions of Americans in the name of protecting consumers.

Also, in the name of protecting us from ourselves, this bill would require banks to keep and maintain records of all bank account activity and financial activity of their clients for at least 3 years, while also requiring this information to be sent regularly to the bureau for safekeeping.

I have serious concerns about our government collecting information on the daily activities of its citizens and equal concerns about the government approving or disapproving the financial choices of its citizens. For those who agree with me, and even those who disagree with me on the consequences or meaning of the language in this bill, I have a straightforward and easy solution.

My amendment, 4018, simply says that if the new bureau created in this bill wants to investigate a consumer's individual transactions, then the bureau must get written permission from that individual. All this means is that the bureau cannot investigate someone's banking activities or credit card purchases without that person's permission.

The bill is simply that. This is one page going into thousands of pages. It says:

Notwithstanding any other provision of this Act, any provision of the enumerated consumer laws or any provision of Federal law, the Bureau may not investigate an individual transaction to which a consumer is a party without the written permission of that consumer.

It is pretty straightforward. It makes sure they aren't going to investigate a consumer's individual transactions without written permission from that individual, and they can't investigate someone's banking activities or their credit card purchases without that person's permission.

My amendment would also make it so that the government can't watch over my financial transactions without my saying so or without you saying so on yours. My amendment gives consumers a choice. I don't think the bureau should be allowed to look over my credit card statement to see if I am spending too much money. I don't think the bureau should be allowed to monitor my purchases and note that I bought a new car, a new boat, or a gun.

I recognize there are consumers out there who may want the government in their lives, monitoring their transactions. I don't claim to understand that desire. But my amendment would not take away their choice in the matter. In fact, as a consumer, if I get into credit card trouble and want the bureau's help, all I have to do is contact the bureau and give them permission to look at my financial documents. My amendment would also give consumers that ability. As long as the bureau has my written permission as a consumer, they can look at my financial past, present, and future.

Our State offices have that kind of a procedure when they do case work for individuals. Our State offices have a process where they will look into problems that an individual is having with the Federal Government. But in order to do that, they have to get a signed privacy release. That is so we can't just be looking into constituents' problems that we think might be a problem for them without their knowledge or their permission. That is all I am doing with this government bureau, is making sure the consumer knows that bureau will be going through their records with their permission.

In reality, this bill encourages consumers to rely on the government to protect them from bad decisions instead of empowering due diligence. The role of the Federal Government should not be to stand over our shoulders telling us if our decisions are right or good. I was here on the Senate floor just a few short days ago saying that you and I have the inherent freedom to make choices, even the freedom to make bad choices. In America, that is the way it works. Big Brother is not allowed to hang over your shoulder to decide whether you are making a poor decision.

Because of this bill and the actions of the current administration, people are more concerned about their freedoms right now than they ever have been,